

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNA RILEY,

Plaintiff,

v.

LLOYD G. PLOUTZ, et al.,

Defendants.

No. 1:20-cv-01177-DAD-EPG

ORDER GRANTING PARTIES'  
STIPULATIONS FOR DISMISSAL FROM  
THIS ACTION

(Doc. Nos. 11, 36, 38)

On August 5, 2020, plaintiff Donna Riley, in her official capacity as the Treasurer-Tax Collector of Stanislaus County, filed a first amended complaint in interpleader in the Superior Court of Stanislaus County against Lloyd G. Ploutz; Seeger Industries, Inc. (“Seeger”); Granada Park Homeowner’s Association (“Granada”); William R. Morehead; United States Internal Revenue Service (“IRS”); State of California Franchise Tax Board (“FTB”); and City of Modesto (“Modesto”). (Doc. No. 6-9 (“FAC”).) The FAC alleges as follows. Plaintiff sold tax-delinquent real property located at 336 De Vega Court, Modesto, California 95354 (“the Property”) at public auction, and plaintiff owned one of the parcels sold at the auction. (*Id.* at ¶ 10.) The Property sold at auction for the total purchase price of \$180,208.00, and \$168,533.44 in excess proceeds remains available to distribute to legitimate claims thereon. (*Id.*) Plaintiff alleges that she possesses no interest in the excess proceeds and is indifferent as to which defendants should receive them. (*Id.* at ¶ 20.)

1           On August 20, 2020, IRS removed the action to this federal court. (Doc. No. 1.) On  
 2 August 21, 2020, Seeger filed a cross-complaint against all other defendants. (Doc. No. 6-14).<sup>1</sup>  
 3 On September 17, 2020, Modesto filed a stipulation for dismissal with prejudice as to itself  
 4 pursuant to Federal Rule of Civil Procedure 41(a). (Doc. No. 11.) On September 30, 2020,  
 5 Morehead filed a cross-complaint against all other defendants. (Doc. No. 14.) On October 1,  
 6 2020, IRS filed a cross-complaint against Ploutz. (Doc. No. 15.)

7           On January 20, 2021, the assigned magistrate judge issued an order following the January  
 8 19, 2021 initial scheduling conference. (Doc. Nos. 24, 25.) The order recounted a discussion at  
 9 the scheduling conference, during which the parties discussed that Modesto’s September 17, 2020  
 10 stipulation requested court relief beyond mere dismissal from the action. (Doc. No. 25 at 3–4; *see*  
 11 also Doc. No. 11 at 2.) The magistrate judge explained that an order requiring relief beyond  
 12 dismissal may require a request for dismissal under Rule 41(a)(2). (Doc. No. 25 at 4.)  
 13 Accordingly, the magistrate judge ordered the parties to file stipulations of dismissal as to  
 14 plaintiff, Modesto, and FTB no later than February 19, 2021 in accordance with Rule 41(a). (*Id.*  
 15 at 3.)

16           On February 10, 2021, the parties filed a stipulation to dismiss plaintiff from this action  
 17 with prejudice. (Doc. No. 28.) The parties also stipulated that they will each bear their own fees  
 18 and costs; that plaintiff shall be discharged and relieved of any further liability to all the named  
 19 defendants in connection with this action, the Property, and any claims submitted by the parties  
 20 related to the Property; and that plaintiff shall deposit \$176,079.02 into the Eastern District  
 21 Federal Court Treasury by March 5, 2021. (*Id.* at 2–3.)

22           On February 12, 2021, the magistrate judge issued an order concerning the February 10,  
 23 2021 stipulation for dismissal. (Doc. No. 32.) The magistrate judge noted that “several signature  
 24 blocks are unsigned,” and “[t]hus, the stipulation does not comply with Rule 41(a)(1)(A)(ii),

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25           <sup>1</sup> On September 8, 2020, IRS filed a supplement to its notice of removal, which attaches  
 26 additional records from the Stanislaus County Superior Court that were not previously filed with  
 27 the notice of removal. (Doc. No. 6.) These attachments include: (1) Seeger’s cross-complaint,  
 28 which was filed in Stanislaus County Superior Court on August 21, 2020 (Doc. No. 6-14), and (2)  
 IRS’ notice of notice of removal to federal district court, which was filed in Stanislaus County  
 Superior Court on August 24, 2020 (Doc. No. 6-15).

1 which permits voluntary dismissals without a court order by filing ‘a stipulation of dismissal  
 2 signed by all parties who have appeared.’” (*Id.* at 1.) The magistrate judge ordered plaintiff to  
 3 file a stipulation of dismissal signed by all parties by no later than February 19, 2021. (*Id.* at 2.)  
 4 The magistrate judge noted that if “Plaintiff believes that the missing signatures are not necessary,  
 5 on the basis that those parties have not appeared or for any other reason, Plaintiff may file a  
 6 supplemental memorandum explaining her position in lieu of a revised stipulation.” (*Id.*)

7 On February 18, 2021, plaintiff filed a second stipulation for dismissal with prejudice as  
 8 to herself. (Doc. No. 36) (listing signatures on behalf of plaintiff and IRS, Seeger, Ploutz,  
 9 Granada, Modesto, and Morehead). Plaintiff also filed a supplemental memorandum, in which  
 10 she states that she served all parties with the written stipulation and requested permission to sign  
 11 on their behalf. (Doc. No. 37 at 1–2.) As of February 18, 2021, FTB was the only party that had  
 12 not granted permission to electronically sign on its behalf. Plaintiff argued that because FTB has  
 13 disclaimed any interest in this case, the parties in good faith anticipated no objection on FTB’s  
 14 part. (*Id.* at 2) (citing Doc. No. 20 at 8–9.)

15 Subsequently, on February 22, 2021, the parties filed a stipulation for dismissal with  
 16 prejudice as to Modesto and FTB.<sup>2</sup> (Doc. No. 38) (listing signatures on behalf of plaintiff and  
 17 IRS, Seeger, Modesto, Granada, Morehead, and FTB).<sup>3</sup> Modesto and FTB each disclaimed any  
 18 further interest in the case, including any claims or interests they might have at issue in this case.  
 19 (*Id.* at ¶¶ 2, 5, 6.) The parties stipulated that they will each bear their own fees and costs. (*Id.* at  
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21 <sup>2</sup> Stanislaus County is also referenced as a defendant throughout the February 22, 2021  
 22 stipulation, and the parties stipulated for dismissal with prejudice as to Stanislaus County. (See  
 23 Doc. No. 38 at 2–3, 6.) However, it appears that Stanislaus County is not a named defendant in  
 24 this action. Neither the first amended complaint in interpleader (*see* FAC) nor any of the cross-  
 25 complaints (*see* Doc. Nos. 6–14, 14, 15) name Stanislaus County as a defendant. Additionally,  
 26 Stanislaus County Counsel Sweena Pannu—who signed the February 22, 2021 stipulation on  
 27 behalf of plaintiff (*see* Doc. No. 38 at 4)—is listed on the docket solely as plaintiff’s counsel.  
 28 (See Doc. No. 26) (designating Stanislaus County Counsel Pannu as plaintiff’s counsel).  
 Accordingly, the court will not order dismissal of Stanislaus County, which is not a party to this  
 action.

<sup>3</sup> Although Ploutz signed the February 18, 2021 stipulation, he did not sign the February 22, 2021 stipulation. (*Compare* Doc. No. 36 *with* Doc. No. 38.) However, Ploutz has not yet appeared in this action. (*See* Doc. No. 38 at 2 n.1.) Thus, Ploutz’s signature is immaterial.

1       3.) The parties also stipulated that plaintiff and IRS, Seeger, Granada, and Morehead shall be  
2       discharged and relieved of any further liability to Modesto and FTB in connection with this action  
3       and the Property, including Modesto's claim in the amount of \$611.64 recited in the operative  
4       complaint (the "Modesto Claim"). (*Id.*; *see also* FAC. at ¶ 19.)

5                  Pursuant to the parties' stipulations (Doc. Nos. 11, 36, 38) and good cause appearing, it is  
6       hereby ordered that:

- 7                  1. This action is dismissed with prejudice as to plaintiff Donna Riley in her official  
8                  capacity as Treasurer-Tax Collector of Stanislaus County; defendant and cross-  
9                  defendant Modesto; and defendant and cross-defendant FTB;
- 10                 2. This action proceeds on the following complaints:
  - 11                     a. Cross-claimant Seeger's cross-complaint against cross-defendants Ploutz,  
12                     Granada, Morehead, and IRS (Doc. No. 6-14)
  - 13                     b. Cross-claimant Morehead's cross-complaint against cross-defendants  
14                     Granada, Ploutz, Seeger, and IRS (Doc. No. 14); and
  - 15                     c. Cross-claimant IRS' cross-complaint against cross-defendant Ploutz (Doc.  
16                     No. 15);
- 17                 3. The parties shall bear their own fees and costs in this action, including attorneys'  
18                  fees concerning any and all of defendant and cross-defendant Modesto's rights,  
19                  title, and or interests in the Property, or any proceeds from the sale of the Property,  
20                  including the Modesto Claim;
- 21                 4. The parties shall be discharged and relieved of any further liability to plaintiff in  
22                  her official Treasurer-Tax Collector of Stanislaus County, in connection with this  
23                  action, the Property, and all claims made with respect to, arising from the Property  
24                  and proceeds from the sale of the Property;
- 25                 5. Plaintiff, defendant and cross-defendant IRS, and defendant and cross-defendant  
26                  Seeger shall be discharged and relieved of any further liability to defendant and  
27                  cross-defendant Modesto in connection with this action, the Property, and the  
28                  Modesto Claim;

- 1       6. Plaintiff in her official capacity as the Treasurer-Tax Collector of Stanislaus  
2       County shall deposit the excess proceeds from the sale of the Property in the  
3       amount of \$168,533.44, along with the earned interest of \$7,545.58, for a total  
4       amount of \$176,079.02, by March 5, 2021;
- 5       7. The Clerk of Court is directed to terminate the following parties from this action:  
6           a. Plaintiff and cross-defendant Donna Riley in her official capacity as  
7              Treasurer-Tax Collector of Stanislaus County;  
8           b. Defendant and cross-defendant Modesto; and  
9           c. Defendant and cross-defendant FTB; and  
10          8. The Clerk of the Court is directed to update the docket to reflect cross-claimant  
11         Seeger's cross-complaint against cross-defendants Ploutz, Granada, Morehead,  
12         and IRS (Doc. No. 6-14).

13 IT IS SO ORDERED.

14 Dated: February 25, 2021

*Dale A. Drayd*  
15 UNITED STATES DISTRICT JUDGE

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